UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

SOLAE, L.L.C.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 4:03CV00732 HEA
	)	
ARCHER DANIELS MIDLAND COMPANY	)	
	)	
and	)	
	)	
AMERIFIT NUTRITION, INC.	)	
	)	
Defendants.	)	

DEFENDANTS, ARCHER DANIELS MIDLAND COMPANY AND AMERIFIT NUTRITION, INC.'S, MOTION FOR RECONSIDERATION

Defendants, are well aware that Motions for Reconsideration are not to reargue, but solely to raise issues of judicial inadvertence. ***Lowry v. McDonnell Douglas Corp.***, 211 F.3d 457, 460-61 (8th Cir.2000)(citing to FRCP Rule 60(b)(1)). In this case, the Court found at page 7 of its March 11, 2004 Order, denying Defendants Motion to Dismiss, that "the right to sue rests solely with Plaintiff." However, the Patent Licensing Agreement between Protein Technologies International, Inc. ("PTI") and Novogen did *not* grant PTI, now Plaintiff Solae, the sole right to sue under U.S. Patent No. 6,562,380 ("the '380 patent").

The facts of the present case are not analogous to those in ***Vaupel Textilmaschinen KG v. Meccanica Euro Italia SPA***, 944 F.2d 870 (Fed. Cir. 1991). In ***Vaupel***, the Federal Circuit found dispositive on the issue of standing that the patentee (Marowsky) granted to Vaupel the sole right to sue for infringement. *Id.* at 875-76. Indeed, the ***Vaupel*** court quoted contract

language to that effect. *Id.* at 874 ("The final decision, whether or not a particular party is to be sued lies, however, solely with VAUPEL."). No such grant is present in the Patent License Agreement by which Solae has rights in the '380 patent. While Solae "may . . . bring suit" under the '380 patent, Solae does not have the sole right to sue. *See*, Patent License Agreement at 14.01-14.03.

All of this means that the risk of multiple lawsuits on the same patent is not academic. Under the Patent License Agreement, both Solae and Novogen have rights in independent claim 1 of the '380 patent, which is directed to isoflavones extracted from "soya or clover." Therefore, both may bring an action for infringement of claim 1 of the '380 patent, so the distinction between soy-derived isoflavones and non-soy-derived isoflavones does not prevent the possibility of two suits on the same patent against a single party. Because the Patent License did not convey all substantial rights in the '380 patent, Solae does not have standing to sue in its own name. *See, **Prima Tek II, L.L.C. v. A-Roo Co.***, 222 F.3d 1372, 1381 (Fed. Cir. 2000) ("a patent owner's agreement to be bound by judgments against a licensee [cannot] circumvent the rule of Independent Wireless that the patent owner must ordinarily join, in any infringement action, an exclusive licensee who possesses less than all substantial rights in the patent.").

If Solae is permitted to bring this action regardless of the true ownership of the '380 patent (Novogen), then Defendants are vulnerable to a second lawsuit by Novogen, even after a finding of invalidity and non-infringement of the '380 patent. Plaintiff's Complaint must be dismissed for lack of standing and failure to join an indispensable party. At minimum, this Court should order Novogen be joined as an indispensable party.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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